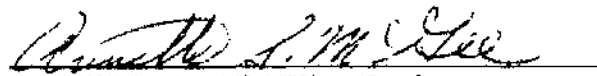


ORDER

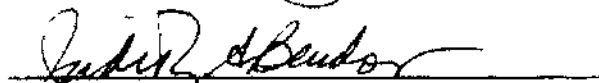
Notice of Civil Penalty No. DE 90-S206 is AFFIRMED in full for fifteen thousand dollars (\$15,000), but \$2,500 is suspended provided there are no violations of Washington Water Pollution laws, Chapt. 90.48 RCW, for two years from the date of this Order.

DONE this 6th day of February, 1992.

POLLUTION CONTROL HEARINGS BOARD


ANNETTE S. MCGEE, Member


HAROLD S. ZIMMERMAN, Chairman


JUDITH A. BENDOR, Attorney Member

0086B

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following:

1 read into the Washington statute at RCW 90.48.360 and .325 a
2 requirement of knowledge. To do so would contravene the legislative
3 intent to protect the environment.

4 We conclude RCW 90.48.360 and .325 are strict liability
5 provisions and no knowledge of the release of oil is required. We
6 conclude appellants violated these sections.

7 V

8 We now go to the question: "Is the Amount of Penalty
9 reasonable?" RCW 90.48.144 provides for up to \$10,000 per day per
10 violation. The penalty could have been \$30,000. The penalty is a
11 civil one, to promote appellants' and the public's compliance.

12 Evidence showed that the oil reached approximately two miles
13 downstream from the origin, and at the source point, the oil was 1/16"
14 to 1/8" thick. It also reached three-quarters of the width of the
15 Chehalis River.

16 When reviewing the amount of penalty, several factors are
17 considered: the maximum amount possible, any environmental harm, the
18 nature and scope of the violation, any actions taken before the
19 penalty order issued to remedy the damage, and any past violations.

20 Under all the factors, we conclude the \$15,000 civil penalty is
21 proper and should be affirmed. Since there was no past violation,
22 some slight mitigation is merited.

1 RCW 90.48.325 states in relevant part:

2 . . . It shall be the obligation of any person owning
3 or having control over oil entering waters of the state
4 in violation of RCW 90.48320 to immediately collect and
5 remove the same. If it is not feasible to collect and
6 remove, said person shall take all practicable actions
7 to contain, treat, and disperse the same. The director
8 shall prohibit or restrict the use of any chemicals or
9 other dispersant or treatment materials proposed for use
10 under this section whenever it appears to him that use
11 thereof would be detrimental to the public interest.

12 The goal is to prevent releases to the environment. Persons are
13 at all times to have control over the oil. RCW 90.48.320. This
14 strict liability approach parallels other state environmental statutes,
15 e.g. State Clean Air Act, Chapter 70.94 RCW and Hazardous Waste
16 Management, Chapter 70.105 RCW. See PCHB 84-182 and 85-66, CH20, Inc.
17 v. DOE. (Neither intent nor negligence is relevant.) Also, see R. G.
18 Leary Construction v. DOE, PCHB 90-1; King v. PSAPCA, PCHB 88-59; and
19 Alexis Shipping Co. v. DOE, PCHB 297.

20 When the statute wanted to impose a less than strict liability
21 duty it did so in clear, unequivocal language at RCW 90.48.350.

22 The Washington Legislature, when it enacted RCWs 90.48.315
23 through 90.48.410, is presumed to be aware of the federal law. The
24 federal law explicitly requires knowledge of the release before a duty
25 to inform arises. 33 U.S.C. Sect. 1321(b)(5). This contrasts with
26 Washington law.

27 In light of the above, it is impermissible for this Board to now

1 the discharge? Is the amount of the penalty reasonable?

2 III

3 RCW 90.48.320 states:

4 . . . It shall be unlawful, except under the
5 circumstances hereafter described in this section,
6 for oil to enter the waters of the state from any
7 ship or any fixed or mobile facility or installation
8 located offshore or onshore whether publicly or
9 privately operated, regardless of the cause of the
entry or fault of the person having control over the
oil, or regardless of whether it be the result of
intentional or negligent conduct, accident or other
cause.

10 IV

11 Appellants contend they had no legal duty to inform DOE or
12 contain and collect the oil because they had no knowledge of the
13 release. We conclude this contention is without merit. In so
14 concluding, we look at the statutes, RCWs 90.48.315 through 90.48.410,
15 in their entirety.

16 The legislative intent is found at RCW 90.48.315, which states in
17 part:

18 . . . The legislature finds that oil spills can cause
19 significant damage to the environment and natural
20 resources held in trust by and for the people of this
state.

21 RCW 90.48.360 states in relevant part:

22 . . . It shall be the duty of any person discharging
23 oil or otherwise causing, permitting, or allowing the
24 same to enter the waters of the state, unless the
25 discharge or entry was expressly authorized by the
department prior thereto or authorized by operation of
law under RCW 90.48.200, to immediately notify the
26 department at its office in Olympia or a regional office
thereof, of such discharge or entry.

1 Analytical method used in the Laboratory include GC/FID
2 (Carbon-hydrogen) and GC/FPD (chromatographable sulfur bearing
3 compounds). Exhibits R-2, R-6 and R-7.

4 VIII

5 No evidence was presented of damaged birds or fish. The oil
6 sheen thinned out quickly because of tide and current conditions.

7 IX

8 There is no evidence that the crew knew of the oil spill prior to
9 DOE's appearance at the ship. They had not reported it or instituted
10 a cleanup.

11 X

12 Any Conclusion of Law hereinafter recited which should be a
13 Finding of Fact is hereby adopted as such.

14 From these Findings of Fact, the Pollution Control Hearings Board
15 comes to these:

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over the parties and the subject
19 matter of this review. Chapters 43.21B and 90.48 RCW.

20 II

21 The questions at issue are: If the discharge was unknown to
22 appellants, did they violate RCW 90.48.360 by not notifying DOE of the
23 spill? Did they violate RCW 90.48.325 by not containing or collecting
24
25
26

1 Warren borrowed a small boat and went out on the river to
2 investigate further. He observed oil about one mile downstream and
3 about 500 yards upstream. The oil was about one-sixteenth of an inch
4 to one-eighth of an inch (1/16" to 1/8") in the water at mid-point of
5 the ship, but thinnned out at the downstream one mile point. He took
6 samples at the one-mile point and about mid-point of the ship, where
7 he found the spill to be thicker on the water, in the proximity of the
8 Rio Madeira.

9 Warren and Osweiler continued to survey the river and area. They
10 investigated other possible sources including storm drains and at the
11 edge of the shoreline up and down the river. They found no other
12 likely source that would have caused the oil sheen.

13 VI

14 Warren then boarded the Rio Madeira and explained what he was
15 doing. Communication was difficult because the ship had non-English
16 speaking crew members. He explained to the captain the best he could,
17 and the captain cooperated and escorted him around the ship. Warren
18 saw the safeguard control valve in the bilge was chained and locked.
19 He also took samples from the bilge.

20 VII

21 The samples from the bilge and the Chehalis River were sent to
22 the Manchester Laboratory for comparative analysis. The analysis
23 confirmed a match between the River samples and the vessel's bilge.
24
25
26

1 Rio Madeira had not discharged the oil. However, if it had, the
2 release of oil was not known to the appellants. Therefore, there was
3 no duty to collect it and to inform the DOE.

4 At the hearing on the merits, after testimony was heard and
5 evidence was admitted, appellants stipulated the discharge came from
6 the M/V Madeira. Argument reflects that violation of RCW 90.48.320 is
7 no longer contested. We now recite the facts on the discharge.

8 IV

9 On February 2, 1990, the Rio Madeira berthed at Terminal 4,
10 Aberdeen, WA. On the following day the Rio Madeira took on bunker
11 fuel between 11:10 a.m. and 5:20 p.m. On February 7, 1990, the Rio
12 Madeira moved to the Weyerhaeuser-Cosmopolis berth.

13 On or about February 9, 1990, DOE officials received a report
14 from the Grays Harbor County Division of Emergency Management of an
15 oil sheen on the Chehalis River in the vicinity of the
16 Weyerhaeuser-Cosmopolis docks.

17 V

18 On February 9, 1990, at approximately 7:15 p.m., Robert Warren
19 and Mike Osweller of the DOE responded to the report and conducted an
20 investigation.

21 Upon arrival at the Weyerhaeuser-Cosmopolis dock's edge, Warren
22 and Osweller observed the reported oil sheen. The odor of oil gave a
23 burning sensation to their eyes and nose, as diesel does. The sheen
24 was visible in width about three-fourths of the way across the River.

1 Opening statements were made. Witnesses were sworn and
2 testified. Exhibits were admitted and examined. Written closing
3 argument was filed. From the testimony, exhibits and arguments of the
4 parties, the Board makes these:

5 FINDINGS OF FACT

6 I

7 Appellants Dimond & Co., 4555 S. Columbia Center, Seattle,
8 Washington served as agents for the Nakano Line in Japan. Nakano had
9 chartered a shipping vessel, the M/V Rio Madeira, from Zodiac Maritime
10 Agencies, London, England, who in turn had chartered from Lepta
11 Shipping Co., Monrovia, Liberia. The ship's master was from Glenhawk
12 Maritime Limited, also of Monrovia, Liberia.

13 The M/V Rio Madeira, a foreign shipping vessel, was berthed at
14 Weyerhaeuser's Cosmopolis berth in the Chehalis River, a water of the
15 State, near the Aberdeen-Cosmopolis area in early February, 1990.

16 II

17 The DOE issued a Notice of Civil Penalty No. DE 90-S206, for
18 fifteen thousand dollars (\$15,000) for alleged discharges of oil from
19 the R/V Madeira into State waters in violation of RCW 90.48.320; for
20 failure to collect and remove the oil after entry into the waters, RCW
21 90.48.325; and for failure to notify the DOE of the discharge, RCW
22 90.48.360.

23 III

24 The timely appeal, filed on November 91, 1991, asserted that the
25
26

lib.

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

ZODIAC MARITIME AGENCIES, LTD.,
LEPTA SHIPPING CO., LTD., and
WILLIAMS DIMOND & CO.,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

PCHB No. 90-210

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A formal hearing on an appeal to review a fifteen thousand (\$15,000) Department of Ecology (DOE) civil penalty assessed upon appellants for allegedly causing or permitting an oil spill was held by the Pollution Control Hearings Board, on October 23, 1991, at Lacey, WA. Presiding for the Board was Annette S. McGee, with Attorney Board Member Judith A. Bendor and Chairman Harold S. Zimmerman in attendance. The adjudication concluded on November 15, 1991, when written closing arguments were filed.

Appellants Williams Dimond & Co., Zodiac Maritime Agencies, Ltd., and Lepta Shipping Co., Ltd. were represented by Attorney Andrew J. Garger (Bogle & Gates, Seattle, WA). Respondent DOE was represented by Assistant Attorney General Rebecca A. Vandergriff. The proceedings were recorded by Randi R. Hamilton, Court Reporter, Gene Barker and Associates, (Olympia, WA).

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB NO. 90-210